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| 10/656,027      | 09/04/2003  | Barry Byron          | 33535/US            | 8490             |

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Steven H. Arterberry, Esq.  
DORSEY & WHITNEY LLP  
Suite 3400  
1420 Fifth Avenue  
Seattle, WA 98101

EXAMINER

DESAI, HEMANT

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/656,027

Applicant(s)

BYRON ET AL.

Examiner

Hemant M Desai

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 23-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lanyard (46) connected to the receiver portion (14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 3721

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 23-42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The new subject matter, which was not described in the originally filed specification, for example: "the opening being bracketed by first and second side ends of the receiver portion" (claims 23 and 40, lines 5-6; claim 33, lines 4-5).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 23-25, 29-31, 33-35, 39-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent (8-258851).

Japanese Patent discloses a sealing apparatus for sealing bag, comprising an elongated sealing member (21, fig. 1), and an elongated receiver portion (22, fig. 1) having at least one engagement aperture (23, fig. 3) to receive the sealing member, the receiver portion having an opening extending along a length of the receiver portion (see figs. 1-3) providing access to the engagement aperture, and the receiver portion having

lugs (71, fig. 8) that project generally outwardly and downwardly from the receiver portion provided at a location that is spaced apart from the opening providing a gripping surface, which meets all the claimed limitations

Regarding claims 24 and 34, the opening includes ridges (see fig. 8) that extend along the length of the receiver, and wherein the lugs extend outwardly and upwardly from the ridges.

Regarding claims 25 and 35, wherein the elongated sealing member has a circular cross-section (see figs. 6-7) and the engagement aperture of the receiver portion has an approximately circular cross-sectional shape (see figs. 6-7) that is configured to receive the sealing member.

Regarding claims 29 and 39, the coupling member is flexible that couples the sealing portion to the receiver portion (see figs. 1-7).

Regarding claims 30-31, 39, Japanese Patent discloses the sealing portion (21) and receiving portion (22) are formed of a resilient polymeric material (see translation page 6, paragraphs 10 and 11).

Regarding claims 40-42, Japanese Patent discloses a method for sealing a bag (see fig. 1) using an apparatus (20, fig. 1) having an elongated sealing member (21) and an elongated receiver portion (22) having at least one engagement aperture (23) configured to receive the sealing member (see fig. 1), the method comprising positioning a portion of a resealable bag (fig. 1) proximate to the engagement aperture, positioning the sealing member proximate to the portion of the resealable bag and the engagement aperture, and pressing the sealing member into the engagement aperture

Art Unit: 3721

of the receiver portion with the portion of the resealable bag interposed between the sealing member and the receiver portion (see fig.1), which meets all the claimed limitations.

Regarding claim 41, positioning a portion of a resealable bag proximate to the engagement aperture further comprises positioning an opening portion of the bag proximate to the engagement aperture (see fig. 1).

Regarding claim 42, pressing the sealing member into the engagement aperture of the receiver portion further comprises closing the resealable bag to form a hermetic seal therein (see fig. 1).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 26, 32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent in view of U.S. Application No. US 2003/0188510.

Japanese Patent, as mentioned above, discloses all the claimed limitations, except for a handle. However, U.S. Application teaches a handle (16, figs. 1-3) to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver) (see page 1, paragraph 3, lines 9-11). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the handle as taught by U.S. Application No. 10/223647 in the bag sealing apparatus of

Art Unit: 3721

Japanese Patent to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver).

Regarding claim 32, U.S. Application teaches that the clamp and receiver are made of flexible metallic materials (see page 1, paragraph 11, lines 1-6). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the clamp and receiver are made of metallic materials as taught by U.S. Application in the bag sealing apparatus of Japanese Patent.

8. Claims 27-28 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent (8-258851).

Japanese Patent discloses an opening that extends along a length of the sealing portion (see figs. 1-4, 6-8) and a lanyard (61, fig. 7) coupled to the receiver portion (22, fig. 7). Japanese Patent does not disclose expressly that the lanyard extends through the opening of the sealing portion. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the lanyard through the opening because Applicant has not disclosed that by extending the lanyard through the opening provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the lanyard (61) attached to the sealing portion and receiving portion as disclosed in the Japanese Patent or the claimed lanyard extends through the opening of the sealing portion because both lanyards perform the same function to prevent lost of either the receiving portion or sealing portion and thus to prevent the sealing apparatus form becoming

Art Unit: 3721

unusable. Therefore, It would have been an obvious matter of design choice to modify Japanese Patent to obtain the invention as specified in claims 27-28 and 37-38.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..



Art Unit: 3721

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai  
Examiner  
Art Unit 3721

HMD

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal flourish extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700